IN THE HIGH COURT OF DELHI AT NEW DELHI

Crl. Appeal No. 226/2005

Manoj Kumar & Anr. .....Appellants
! through: Mr. Randhir Jain, Advocate with
Ms. Ruchika Jain, Advocate

VERSUS

$ State .....Respondent
^ through: Mr. Anil Soni, Advocate for State

Crl. Appeal No. 240/2005

Ajit Singh .....Appellant
! through: Mr. Vikas Pahwa, Advocate with
Mr. Abhinit Das, Advocate

VERSUS

$ State of NCT of Delhi .....Respondent
^ through: Mr. Anil Soni, Advocate for State

Crl. Appeal No. 265/2005

Ashok Kumar .....Appellant
! through: Mr. Randhir Jain, Advocate with
Ms. Ruchika Jain, Advocate,
Mr. Vikas Pahwa, Advocate and
Mr. Abhinit Das, Advocate

VERSUS

$ State .....Respondent
^ through: Mr. Anil Soni, Advocate for State

Crl. Appeal No. 279/2005

Ashvir .....Appellant
! through: None

VERSUS

$ State .....Respondent
^ through: Mr. Anil Soni, Advocate for State

% **D**ATE OF DECISION: 06-09-2007

CORAM:

* **Hon'ble Mr.Justice Pradeep Nandrajog**

1. Whether reporters of local papers may be allowed to see the judgment? Y

2. To be referred to the Reporter or not? Y

3. Whether judgment should be reported in Digest? Y

: **PRADEEP NANDRAJOG, J.** (Oral)
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1. Afore-noted appeals arise out of a common judgment of conviction dated 21.2.2005 in Sessions Case No.139/2001.

2. Thus, the 4 appeals have been taken up together for hearing.

3. At the outset, I may note that in Crl.Appeal No.240/2005 which was listed on 29.8.2007 learned counsel for the appellant was directed to send communications to learned counsel for the other appellants informing them that all appeals

would be listed for final hearing on 6.9.2007 i.e. today.

4. Learned counsel for the appellant in Crl.Appeal No.240/2005 has produced 3 receipts issued by Blaze Flash Couriers Ltd. which evidence that learned counsel, Shri Vikas Pahwa, had intimated Shri Sachin Chopra, Shri Randhir Jain as also Shri Vijender Sharma, counsel for appellants in the other 3 appeals that matter would be listed for hearing today. Mr.Vikas Pahwa states that his colleague Mr.Abhinit Das has personally spoken to Mr.Vijender Sharma, counsel for appellant Ashok Kumar and had duly informed him that Crl.Appeal No.265/2005 would be listed today. Learned counsel states that Mr.Vijender Sharma, Advocate for accused Ashok Kumar informed the counsel i.e. Abhinit Das that he was never the counsel for Ashok Kumar.

5. I note that Crl.Appeal No.265/2005 has been filed by Vijender Sharma, Advocate.

6. Since Mr.Vikash Pahwa is appearing for the appellant of Crl.Appeal No.240/2005 and Mr.Randhir Jain, Advocate is appearing for the appellants in Crl.Appeal No.226/2005 I have requested learned counsel to act as amicus for appellant Ashok Kumar. Since learned counsel have prepared the brief they have agreed to assist the Court in Crl.Appeal No.265/2005 as well.

7. Criminal investigation commenced when PW-3 Raghunath lodged a complaint which resulted in registration of FIR No.410/1999 PS Mehrauli informing that in the intervening night of 17.6.1999 and 18.6.1999 he was proceeding from Village Manger in Haryana to his house in Vasant Kunj in his maruti Esteem car bearing No.DL-3CV-9810. At around 12.30 in the night he crossed Jaunapur village on main Delhi-Gurgaon road. He wanted to ease himself. Stopping the car by the roadside he indulged in the usual habit of urinating on the road. Not only was he relieved of the pressure on his bladder but was even relieved of his car, his gold ring, his gold chain, his mobile telephone, his briefcase, his watch and the money he was carrying in his wallet. He stated that 5 boys came in maruti car bearing No.DL-3CB-5254 and so relieved him. He stated that leaving behind the maruti car, his car was carjacked by said persons. FIR No. 410/99 P.S. Mehrauli, Ex. PW1/A was registered at 3.40 A.M. pursuant to D.D.No. 76 B recorded at 1.55 A.M.

8. PW-2, K.A.Singh visited the scene of the crime on 18.6.1999 and lifted chance finger prints from the maruti car. They later on matched with the finger prints of Ashok. The maruti car was seized at the site of the crime vide seizure memo Ex.PW-7/B.

9. 2 days thereafter information was received that the car of PW-3 had met with an accident near Dadri. Accompanied by PW-3, the investigating officer reached Dadri. The car was taken into custody.

10. Another 2 days thereafter, Jagbir and Ajit were arrested by the police. Statedly, Ajit made a disclosure statement at the first instance followed by a disclosure statement made by Jagbir. The two statedly not only confessed to the carjack and the dacoity, implicating besides self, Ravinder Kumar @ Ravi, Ashvir, Ashok Kumar and Manoj. Stately, Ajit Singh further disclosed to the police that the booty was shared as follows:-

(1)	Ravinder	....	Briefcase.
(2)	Ashvir	....	Gold ring.
(3)	Jagbir	....	Watch
(4)	Ashok	....	Cash (Rs.1,200/-)
(5)	Manoj	....	Gold Chain.
(6)	Ajit	....	Mobile.

11. Accompanied by Head Constable Satyawan, PW-6 recoveries as per disclosure statement of Ajit was statedly made from the persons named by Ajit in his disclosure statement save and except no recovery being effected from Ashok Kumar. The prosecution alleges that he spent the

money which was shared by him as a part of the booty.

12. Challan was filed. Charges were framed against the accused. They were charged for offences under Section 398/395/412 IPC.

13. PW-6 proved recovery memos PW-6/M, PW-6/J, PW-6/F, PW-6/H, PW-6/E pertaining to the stated recovery of the brief case, gold ring, watch, gold chain and mobile telephone from accused Ravinder, Ashvir, Jagbir, Manoj and Ajit respectively.

14. The complainant as also the victim, Raghunath who deposed as PW-3 deposed at the trial that he was carjacked as disclosed by him in the FIR. That before carjacking his car he was relieved of his brief case, gold ring, watch, money, gold chain and mobile telephone but stated that when he received a telephone call from the police that his car had been involved in an accident at Dadri and he accompanied the police to Dadri he identified his vehicle at the Dadri Police Station he saw that his brief case along with his documents was in the car. He stated that brief case was thereafter handed over to him. PW-3 failed to identify any accused at the trial.

15. In that view of the matter, learned Trial Judge has held that recovery of the briefcase against Ravinder has fallen. As against the other accused, learned Trial Judge has opined

that since recoveries were effected pursuant to the disclosure statement made by Ajit and Jagbir the recovery lends assurance and credibility to the disclosure made by co-accused Ajit and Jagbir, Section 27 of the Evidence Act was attracted. Thus, learned Trial Judge has proceeded to convict all the accused persons save and except Ravinder.

16. PW-2, K.N.Singh, finger print expert from the Finger Print Burearu, Malviya Nagar proved that he had examined the maruti car bearing No.DL-3CB-5254 and had lifted finger prints Q-1, Q-2, Q-3 and Q-4. That the same tallied with the finger prints of Ashok as per his report PW-2/A.

17. Pertaining to the maruti car, it would be relevant to note that not only were particulars thereof disclosed in the FIR by PW-3, the car was recovered from the spot where complainant had been victimized vide seizure memo Ex.PW-17/B. Seizure being duly proved by PW-7 Sub-Inspector Vijay Kumar.

18. Thus, vis-a-vis Ashok Kumar incriminating evidence surfaced in the form of his finger prints on the maruti car which I note was itself a stolen car. I further note that Ashok Kumar has failed to give any satisfactory explanation when his statement was recorded under Section 313 Cr.P.C. as to under what circumstances his finger prints came on the maruti car.

19. Pertaining to accused Ashok Kumar to sustain his conviction it would be sufficient for me to note that incriminating evidence has surfaced in the form of the PW-3, the victim, disclosing the number of the white maruti car in which accused persons came before he was waylaid. Recovery of the car from the spot where complainant was waylaid. Finger prints of Ashok Kumar in the maruti car. Thus, there is no merits in Crl.Appeal No.265/2005 filed by Ashok Kumar. The same is dismissed.

20. Pertaining to the other accused, it would be relevant to note that recovery of briefcase against Ravinder was doubted by the learned Trial Judge on account of testimony of the complainant PW-3 who stated that his briefcase was in his car when he identified his car at PS Dadri, 2 days after the incident. Obviously, recovery memo Ex.PW-6/M is a doubtful recovery memo.

21. It is no doubt true that a statement of a co-accused which results in a discovery of a fact within the ambit of Section 27 of the Evidence Act is admissible in evidence not only against the maker of the statement but even against the co-accused but as held by the Full Bench of the Madras High Court in the decision reported as ILR (1937) Madras 695 *In Re: Athappa Goundan* followed by a learned Single Judge of the

Nagpur High Court in the decision reported as AIR 1947 Nagpur 57 *Narayan Dinba vs. Emperor* such a disclosure statement is a weak evidence. Its evidenciary value is very low.

22. Suffice would it be to note that a statement made by an accused when in custody of a police officer is inadmissible evidence save and except when the same results in the discovery of a fact not within the knowledge of the police. This limited admissibility to such a statement is under Section 27 of the Evidence Act. The reason is this. Law views with a taint a statement purportedly made by an accused when in custody of a police officer. But when discovery of a fact emanates, said discovery of a fact lends some credibility or assurance of the truthfulness of the disclosure statement made and as recorded by the police. Thus, rule of prudence is followed by the Courts to look for either intrinsic strength in the disclosure statement or corroboration by independent evidence.

23. In the instant case admittedly there is no other corroborative evidence.

24. On the intrinsic strength of the disclosure statement made by Ajit and Jagbir pursuant whereto recoveries have been effected, as noted herein above, pertaining to the briefcase, disclosure statement and recovery has been found to be tainted. Thus, there is intrinsic weakness of strength/credibility

in the purported disclosure statement of Ajit.

25. The evidence of the prosecution becomes further weak in view of the testimony of PW-3 i.e. the victim who neither gave the EMIE number of the mobile telephone nor deposed with confidence that the stated mobile telephone was his. Even pertaining to the gold chain and the gold ring he stated in his examination-in-chief that neither articles of jewellery had any distinctive mark and if mixed up with similar objects it would not be possible for him to identify either the ring or the watch. Further he stated in his testimony, to quote: “I was called at the police station after about 4/5 days. They showed me my gold chain, my ring and my mobile phone.”

26. I note that as per seizure memo's Ex. PW-6/J, Ex. PW-6/H and Ex.PW-6/E pertaining to the gold chain, ring and mobile phone the three items were sealed in different parcels on which seal of V.K. was affixed. Thus testimony of PW-3 discredits the seizure of said 3 items.

27. I thus hold that evidence on record is too weak and tenuous vis-a-vis Ashvir, Jagbir, Manoj and Ajit.

28. Standard of proof required at a criminal trial is proof beyond reasonable doubt. A standard of proof attained by the prosecution which falls short of the said standard is insufficient to sustain a conviction

29. Crl. Appeal Nos.226/2005, 240/2005 and 279/2005 are accordingly allowed. The conviction and sentence imposed upon Ashvir, Jagbir, Manoj and Ajit is hereby quashed.

30. If not detained or required in judicial custody in any other offence, said 4 persons are directed to be set free forthwith.

31. Appeal filed by Ashok Kumar i.e. Crl.Appeal No.265/2005 is dismissed.

32. LCR be returned.

September 06, 2007 **PRADEEP NANDRAJOG, J.**
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